

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)
Plaintiff,)
)
v.) C.A. No. 04-10295-WGY
)
ANDREA CABRAL, et al.)
Defendants.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's Application to Proceed Without Prepayment of Fees is denied without prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order.

BACKGROUND

On January 20, 2004, plaintiff Duran Irvin, now incarcerated at the Suffolk County House of Correction, submitted for filing a pro se class-action complaint pursuant to 42 U.S.C. § 1983 naming as defendants Sheriff Andrea Cabral and Deputy Superintendent Mary Mastrorilli. See Complaint, Docket No. 1. With his complaint, plaintiff filed an affidavit in support of class action and two declarations in support of request to proceed in forma pauperis. See Docket Nos. 2-4. Plaintiff seeks to challenge the conditions in the protective custody unit at the Suffolk County House of Correction.

By Order dated February 26, 2004, plaintiff was granted forty-two days to either pay the filing fee or file an Application to Proceed Without Prepayment of Fees and Affidavit. See Docket No. 5. On March 5, 2004, plaintiff filed an Application to Proceed Without Prepayment of Fees and Affidavit. See Docket No. 7. Plaintiff did not attach a certified prison account statement to his application.

DISCUSSION

A party filing a civil action in this Court must either (1) pay the \$150 filing fee for civil actions or (2) file an application to proceed in forma pauperis. See 28 U.S.C. § 1914 (\$150 filing fee); § 1915 (proceedings in forma pauperis).

Plaintiff has submitted an application to proceed without prepayment of the filing fee. However, plaintiff must also submit a certified prison account statement so that the Court may determine what, if any, initial partial filing fee must be assessed. See 28 U.S.C. § 1915 (a)(1), (a)(2).¹

¹Because plaintiff currently is incarcerated, he is informed that the submission of an application to proceed without prepayment of fees does not relieve him from his obligation to pay the full amount of the filing fee; it simply allows him to proceed without pre-payment of the entire filing fee up-front. 28 U.S.C. § 1915(b)(1), (2). If plaintiff submits a certified copy of his prison account statement, the Court will direct the appropriate prison official to withhold from plaintiff's prison account and pay to the Court an

ORDER

ACCORDINGLY, plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 7) is denied without prejudice to prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order. The Clerk is directed to send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit.

The class allegations are stricken as Mr. Irvin cannot represent others.

SO ORDERED.

Dated at Boston, Massachusetts, this 9th day of March, 2004.

/s/ William G. Young
WILLIAM G. YOUNG
CHIEF JUDGE
UNITED STATES DISTRICT COURT

initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.

